

**COMPLAINANT: iXP Corp**

Address: iXP Corp  
Address: 989 Lenox Drive  
Address: Building 1, Suite 124  
Address: Lawrenceville, NJ 08648  
Telephone: 609 406-7600  
E-mail: [william.metro@RCN.com](mailto:william.metro@RCN.com)  
Address: c/o Sean Jackson  
Address: Griffith Phillips Creative  
Address: 10000 N. Central Expy Suite 1350  
Address: Dallas, TX 75231

File Number: CPR 0205  
Date of Commencement:  
02/07/02  
Domain names:  
iXP.com; IXP.com  
Registrar:  
Network Solutions, Inc.  
c/o VeriSign, Inc.  
21355 Ridgetop Circle  
Dulles, VA 20166  
E-mail:  
UDNDRP@NETSOL.COM

Arbitrator: Judith P. Meyer

vs.

**RESPONDENT: CLEMENS OTT**

Address: 6811 Gilbert Road, P.O. Box 1236  
Address: Austin, Texas 78767-1236  
Telephone: 512 708-0220  
E-Mail: Clemens@FLYBYWIRE.COM  
Address: c/o Jep Hill, Esquire  
Address: Law Office of Jep Hill  
Address: P.O. Box 30254  
Address: Austin, Texas 78755  
Telephone: 512 342-8888  
Facsimile: 801 383-9725  
E-mail: [jep@jephill.com](mailto:jep@jephill.com)

Before JUDITH P. MEYER, Arbitrator

**PROCEDURAL HISTORY**

The Complaint was filed with CPR on September 14, 2001 and, after review for administrative compliance, served on Respondent on February 7, 2002. The Respondent did file a Response on or before March 5, 2002. I was appointed Arbitrator pursuant to the Uniform Domain Name Dispute Resolution Policy ("UDRP") and Rules promulgated by the Internet Corporation for Domain Names and Numbers ("ICANN"). Upon the written submitted record including Complaint, Response, copies of e-mail correspondence between Respondent and one "Aaron McKee", the Affidavit of Clemens Ott and the State of New Jersey Corporate Status Report for Complainant, I find as follows:

## FINDINGS

Respondent's registered domain name, IXP.COM, was registered with VeriSign-Network Solutions prior to the Summer of 1998. In registering the name, Respondent agreed to submit to this forum to resolve any dispute concerning the domain name, pursuant to the UDRP.

The UDRP provides, at Paragraph 4(a), that each of three findings must be made in order for a Complaint to prevail:

- i. Respondent's domain name must be identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

**IDENTITY/CONFUSING SIMILARITY:** Complainant alleges that IXP.COM is identical or confusingly similar to Complainant's trademark, iXP.COM, which applies to business consulting services.

Although not specifically alleged by Complainant, the domain names IXP.COM and iXP.COM are, for purposes of locating on the world wide web, identical.

I therefore conclude that the registered domain name IS identical or confusingly similar to Complainant's protected mark.

**RIGHTS AND LEGITIMATE INTERESTS:** Complainant alleges that Respondent has no rights or legitimate interests with respect to the domain name at issue. In support for this allegation, Complainant notes that on December 2, 1999, Complainant registered the domain name ixpcorp.com with Network Solutions, Inc. and that the public has come to associate the word iXP in the business and consulting market with services provided by Complainant. Complainant further argues that Respondent is not currently using, has not used and has made no preparations to use the domain name IXP.COM in connection with the provision of any goods or services and that the domain name IXP.COM does not currently resolve to an active web site.

Respondent, on the other hand, notes that Respondent acquired IXP.COM in the summer of 1998, before Complainant was licensed on February 14, 2000 to do business in New Jersey and before Complainant registered its claimed mark on September 14, 2001 and before Complainant used any of its marks in commerce in November 1999. Respondent notes that it acquired IXP.COM in the Summer of 1998 from its prior registrant. Respondent acquired IXP.COM to use in conjunction with Respondent's development and licensing of software products and services to allow remotely located persons to work together as a group and that Respondent has pursued a legitimate business and has incurred and continues to incur substantial expenses to bring his products and services to market and is engaged in a bona fide enterprise,

UDRP Paragraph 4© provides that Respondent's rights or legitimate interests in a domain name may be demonstrated, without limitation, by showing that (a) before notice to Respondent of the dispute, Respondent has used, or made demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or (b) Respondent has been commonly known by the domain name; or (c) Respondent is making legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Complainant alleges that it has been using the trademark, registered with the United States Patent and Trademark Office, since 1999. Complainant further alleges that Respondent is not currently using the domain name IXP.COM and has made no preparations to use the domain name.

Respondent responds that Respondent purchased the domain name IXP.Com in 1998, updated its registration on Respondent's own servers and on September 8, 1998 formed Fly By Wire, Inc., a Texas business corporation for the purpose of exploiting networked software for group interaction and cooperation, and developing software which uses a proprietary protocol to facilitate group use and hosts the domain IXP.COM on its servers. Respondent notes that prior to receiving a copy of Complainant's Complaint Respondent had never heard or read of the Complainant, iXP Corp nor any of its products, services or marks. Respondent further notes that it was not aware of the existence or planned existence of any enterprise, firm or organization using the word, name or mark IXP or IXP.COM. The Affidavit of Clemens Ott asserts that Clemens Ott is the sole owner and director of Fly By Wire, Inc., an active Texas business corporation formed in 1998 and the owner of the domain IXP.COM. Clemens Ott testifies that he purchased the name IXP.COM from a third party in Summer 1998 and in 1998 updated the registration of the name and began to use the domain name IXP.Com on Respondent's servers. Clemens Ott testifies that Respondent's IXP.COM servers are temporarily off line at the present time, reflecting a temporary problem with the broadband telephone and cable service providers who provide internet access to Fly By Wire, Inc.

I therefore conclude that Respondent DOES have rights or legitimate interests with respect to the domain name at issue.

## **CONCLUSION**

In light of my findings above that (a) the registered domain name IS identical or confusingly similar to Complainant's protected mark; and that (b) Respondent DOES have rights or legitimate interests with respect to the domain name at issue, I find in favor of the RESPONDENT.

## **REMEDY**

Complainant's request to transfer the domain name is hereby DENIED.

*Judith P. Meyer*

March 19, 2002